



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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S.R.C. Inc.)
d/b/a Goodtime Charlies)
3448 S. Adams St.)
Marion, IN 46953)

Permit #RR27-04897

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I.
BACKGROUND OF THE CASE

The S.R.C. Inc., d/b/a Goodtime Charlies, 3448 S. Adams St., Marion, Indiana 46953 ("Permittee") is the holder of an Alcohol and Tobacco Commission permit type 210, permit #RR27-04897. The Permittee is charged with the following violations occurring on September 15, 2009:

Furnishing alcohol beverage to minor, Indiana Code 7.1-5-7-8.

Allowing a minor to loiter. Indiana Code 7.1-5-7-10 (b).

The hearing on the merits was conducted before Hearing Judge E. Edward Dunsmore on March 18, 2010. The Alcohol and Tobacco Commission ("Commission") was represented by the Prosecutor, Jennifer D. Drewry. The Permittee appeared by Sandra (Haman) Weaver, owner; Charles Weaver, owner's husband; and Ronald Uptegraft, bartender. Witnesses were sworn, evidence was heard, the parties presented final arguments and the matter was taken under advisement. Hearing Judge E. Edward Dunsmore, having reviewed the tape recorded transcript of the hearing, the evidence submitted to the Commission at the hearing and the contents of the entire file, now tenders his Proposed Findings of Fact and Conclusions of Law for recommendation to members of the Commission.

II.
EVIDENCE SUBMITTED BEFORE THE COMMISSION

The following exhibits were introduced by the Prosecutor against the Permittee in this cause:

1. The contents of the entire Commission file ("ATC file").
2. Indiana State Excise Police citation report regarding incident occurring on September 15th, at Goodtime Charlies, Marion, IN.
3. Copy of Indiana Excise Police Report of Permit Visit and Evaluation issued to S.R.C. Inc., d/b/a Goodtime Charlies, for Furnishing Alcoholic Beverages to a Minor in violation of IC 7.1-5-7-8 and Allowing a Minor to Loiter in violation of IC 7.1-5-7-10(b) regarding an incident occurring on September 15, 2009, at the Goodtime Charlies in Marion, IN.
4. One copy of a photograph of a youth known as Minor James IU#30037, DOB 11/1/90.

The following exhibits were introduced by the Permittee on behalf of the Permittee in this cause:

None

The following individuals testified on behalf of the Prosecutor against the Permittee in this cause:

1. Indiana Excise Police Officer Sgt. Gregory Wiese.
2. A youth known as Minor James IU #30037, DOB 11/1/90.

The following individuals testified on behalf of the Permittee in this cause:

1. Charles Weaver, husband of Sandra (Haman) Weaver, owner.

III.
FINDINGS OF FACT

1. The Permittee, S.R.C.Inc., d/b/a Goodtime Charlies, 3448 S. Adams St., Marion, Indiana 46953 is the holder of a type 210 permit, permit #RR27-04897 (ATC file).
2. S.R.C. Inc. is the owner of Goodtime Charlies. (permit violation hearing, ATC file).
3. The Permittee, by and through Charles Weaver, admitted that employee/ bartender Ronald Uptegraft sold alcoholic beverages to a minor identified as James IU # 30037, without asking for, or checking his identification to determine his age, and that said sale occurred on September 15, 2009. (permit violation hearing).
4. On Tuesday, September 15, 2009, at approximately 5:40 p.m., Indiana Excise Police Officers Aaron Bishop and Sgt. Greg Wiese were conducting random, unannounced inspections at locations where alcoholic beverages are sold or distributed, pursuant to IC 7.1-5-7-16 and IC 7.1-5-7-17. These inspections are commonly known as Survey of Alcohol Compliance ("SAC") checks. (permit violation hearing; ATC file).
5. Officer Bishop and a minor, known as James IU # 30037, DOB 11/1/90 ("James"), conducted a SAC check at Goodtime Charlies in Marion, Indiana. (permit violation hearing; ATC file).
6. On September 15, 2009, at approximately 5:40 p.m., James and Officer Bishop (in plain clothes) entered Goodtime Charlies in unidentified capacities.(ATC file; permit violation hearing)
7. While inside Goodtime Charlies, James ordered a Coors Light beer. Employee/bartender Ronald Uptegraft retrieved and handed a 12 ounce container of Coors Light to James. A few minutes later, Officer Bishop advised Mr. Uptegraft that Officer Bishop and James needed to assist someone with car trouble and that they needed to leave. Mr. Uptegraft told them that they did not need to pay for the beer. Officer Bishop and James then left the permit premises. (ATC file; permit violation hearing).
8. Officer Bishop and James left Goodtime Charlies shortly thereafter. At no time while inside the permit premises was James asked his age, date of birth, or for identification. (permit violation hearing; ATC file).
9. At approximately 7:10 p.m., Indiana Excise Police Officers Bishop and Wiese returned to Goodtime Charlies. They identified themselves verbally and by badge to Mr. Uptegraft. (permit violation hearing; ATC file).
10. Officers Bishop and Wiese explained to Mr. Uptegraft that the permit premises had earlier been the subject of a SAC check and that he had served a minor without checking the minor's identification. Mr. Uptegraft admitted that he had served a minor. (permit violation hearing; ATC file).
11. Officer Weise completed a Report of Permit Visit and Evaluation charging the permit premises with Furnishing Alcoholic Beverages to a Minor (count one) and Allowing a Minor to Loiter (count two). Mr. Uptegraft signed the violation notice. (permit violation hearing).
12. The permittee, S.R.C. Inc., d/b/a Goodtime Charlies, had failed a previous SAC check without being charged and this was a follow-up visit. (permit violation hearing; ATC file).

13. The Permittee, according to the testimony of Charles Weaver, believes conjunctively and alternatively that:
 - a. The manner in which the SAC check was done amounted to illegal State conduct constituting coercion and deceit.
 - b. The permit premises has been in business since 1973, with no violations and has a good reputation for not serving minors.
 - c. If James had come in by himself, he would not have been served.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these proceedings and over this permittee. Indiana Code 7.1-3-19-1; Indiana Code 7.1-3-23-2
2. The definition of a permittee includes an agent, a servant, or other person acting on behalf of a permittee, whenever a permittee is prohibited from doing an act under this title. Indiana Code 7.1-1-3-30(b)
3. Ronald Uptegraft (employee/bartender) was an agent or other persons acting on behalf of a permittee, namely, S.R.C Inc., d/b/a Goodtime Charlies. Indiana Code 7.1-1-3-30(b)
4. A minor means a person less than 21 years of age. Indiana Code 7.1-1-3-25
5. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Indiana Code 7.1-5-7-10(b)
6. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Indiana Code 7.1-5-7-10(a)
7. It is unlawful for a permittee to allow a minor on his permit premises, except as provided in Indiana Code 7.1-5-7-11 and Indiana Code 7.1-5-7-13 --- 905 IAC 1-15.2-1(b); Indiana Code 7.1-2-3-7.
8. It is unlawful for a person to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Indiana Code 7.1-5-7-8.
9. Defenses to furnishing alcohol are provided in Indiana Code 7.1-5-7-5.1.
10. The burden of proof rests upon the permittee (seller) to establish the defense provided in Indiana Code 7.1-5-7-5.1; *Mulread v. State*, 7 N.E. 884 (Ind. 1886); *Fehn v. The State*, 29 N.E. 1137 (Ind. App.1892)
11. The permittee, S.R.C., d/b/a/ Goodtime Charlies, by virtue of its relationship with Ronald Uptegraft (employee), is guilty of the violations of recklessly furnishing alcoholic beverage(s) to a minor, and allowing a minor to loiter. Indiana Code 7.1-5-7-8 and Indiana Code 7.1-5-7-10(b).
12. The weight of the evidence and burden of proof do not sustain any of the defenses to unlawfully furnishing alcohol to a minor and allowing a minor to loiter as provided for in IC 7.1-5-7-5.1.
13. The weight of the evidence, burden of proof and status of the law do not sustain, either conjunctively or alternatively, the defenses of: a) coercion, b) deceit, c) illegal state conduct, or d) good reputation as a defense. (IC 7.1-5-7-17; U.S. Constitution. Amend. 5; Ind. Const. Article 1, §14)

14. The permittee, S.R.C. Inc., d/b/a Goodtime Charlies, is guilty of recklessly furnishing alcoholic beverage(s) to a minor pursuant to Indiana Code 7.1-5-7-8 and allowing a minor to loiter pursuant to Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge determines from the presentation and review of the evidence that the Prosecution HAS PROVEN that the Permittee, S.R.C. Inc., d/b/a Goodtime Charlies, has violated the following statutes:

Recklessly furnishing alcoholic beverage(s) to minor(s), in violation of Indiana Code 7.1-5-7-8; and
Allowing a minor to loiter in violation of Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge recommends the following disposition to the Commission:

Fine in the amount of five hundred (\$500.00)

Dated: _____

E. Edward Dunsmore Hearing Judge
Alcohol and Tobacco Commission